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Appl. No. 09/976,182  
Amdt. Dated August 27, 2007  
Reply to Office Action of May 25, 2007

• • R E M A R K S / A R G U M E N T S • •

The Official Action of May 25, 2007 has been thoroughly studied. Accordingly, the changes presented herein for the application, considered together with the following remarks, are believed to be sufficient to place the application into condition for allowance.

By the present amendment, claims 9 and 10 have been rewritten in independent form.

In addition, independent claim 1 has been changed to recite that the heights of all of the first and second elasticized zones in the front waist-encircling region are substantially the same as the heights of all of the first and second elasticized zones in the rear waist-encircling region.

This change to the independent claim 1 was made in response to the Examiner's noting on page 2 of the Office Action that "it is noted that the features upon which applicant relies (i.e., the elasticized zones of the front region having the same height as the elasticized zones of the rear region) are not recited in the rejected claim(s)."

Further, on page 2 of the Office Action the Examiner has noted:

The present claims disclose the heights of the first and second elasticized zones being equal throughout the front and rear waist-encircling regions. This language *does not clearly limit* the first and second elasticized zones of the front region as having an equal height of the first and second zones of the rear region. Since Buell disclose the first elasticized zone in the front region is equal in height to the second elasticized zone in the front region (likewise in the rear region), Buell anticipates the present claims.  
the

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It is submitted that this change to independent claim 1 is properly enterable after final rejection inasmuch as the change clarifies the previous language of the claims, which the Examiner indicates was understood (according to the manner in which the Examiner interpreted and applied the teachings of Buell). Thus, it is believed that this change to the claims does not actually require any new considerations as indicated by the Examiner.

Moreover, it is submitted that this change to independent claim 1 both clarifies and conforms the scope of the arguments which were presented in applicants' previous response and which are repeated below.

Further, the changes to independent claim 1 distinguishes over the prior art and places the application into condition for allowance.

Entry of the changes to the claims is respectfully requested.

Claims 1-4, 9 and 10 are pending in this application.

Claim 1 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,931,827 to Buell et al.

Claim 4 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Buell et al.

On page 4 of the Office Action the Examiner has objected to claims 2, 3, 9 and 10 as being dependent upon a rejected base claim, but has otherwise indicated that claims 2, 3, 9 and 10 would be allowed if rewritten in independent form.

For the reasons set forth below it is submitted that all of the pending claims are allowable over the prior art or record and therefore, the outstanding rejections and objection of

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the claims should properly be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

The Examiner states that:

Buell discloses a disposable pull-up undergarment, as shown in figure 1, comprising a liquid pervious topsheet 24, a liquid impervious backsheet 26, and an absorbent core 28. The undergarment has front and rear waist-encircling regions 28, a crotch region 30, a waist opening and a pair of leg openings. The front and rear waist-encircling regions 28 each comprise a first elasticized zone 64 and a second elasticized zone 60/62. The first and second elasticized zones have heights that extend in the longitudinal direction of the garment and are coextensive, as shown in figure 1. The first and second elasticized zones are adjacent each other in the waist-encircling direction of the garment, as shown in figure 1. The first and second elasticized zones are extensible, as disclosed in column 9, lines 19-46. The first elasticized zone is more extensible, and therefore has a greater tensile strength, than the second elasticized zone, as disclosed in column 15, lines 1-25, and column 16, lines 38-64.

The Examiner has relied upon Buell et al. disclosing:

...all aspects of the claimed invention but remains silent as to the exact elongation stress values of the first and second elasticized zones 28a and 28b.

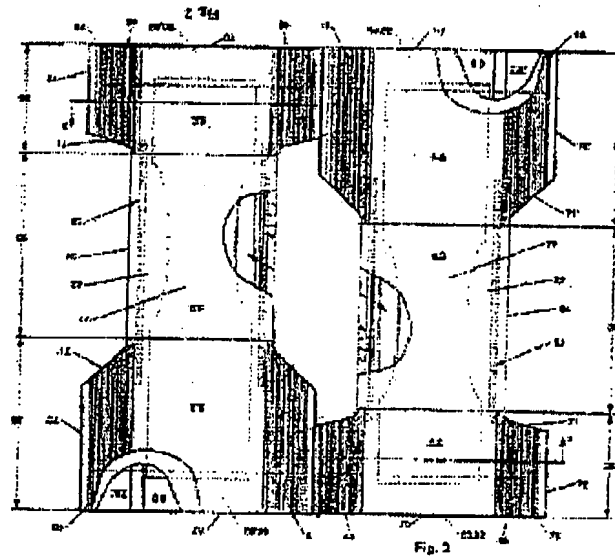
The Examiner takes the position that:

It would have been obvious....to make the first elasticized zone 28a with an elongation stress of 0.1-2.0 N/25mm and the second elasticized zone 28b with an elongation stress of 0.1-0.6 N/25mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routing [sic] skill in the art. *In re Aller*, 105 USPQ 233.

As shown in all the figures of Buell et al., the longitudinal height of the back or rear region 28 of Buell et al. is substantially greater than the longitudinal height of the front region 26.

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Accordingly, as show in the following figure which is a side-by-side comparison of the back and front regions of Buell et al. (with one figure inverted), Buell et al. fails to teach first and second elasticized zone in the front and rear waist-encircling regions that have heights that are substantially equal throughout the front and rear waist-encircling regions, as required by applicants' independent claim 1.



Therefore, Buell et al. cannot be relied upon as anticipating applicants' claimed invention.

Because the heights of the first and second elasticized zones are not substantially equal in Buell et al. throughout the front and rear waist-encircling regions, the force collectively created by the elasticized zones cannot be uniform throughout the first and second elasticized zones. For example, there would definitely be a gradient in the waist-encircling force along leg

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edges 71' (Sec Fig. 2) due to the shape of the elastic panel 78' which is tapered along leg edges 71'.

In contrast, applicants' first and second elasticized zones structurally and functionally cooperate to form cooperating forces around the waist-encircling direction.

It is noted that the Examiner's reference to "first and second elasticized zones 28a and 28b" in Buell et al. is not understood, because Buell et al. does not teach first and second elasticized zones 28a and 28b.

In Buell et al. reference numeral 28 identifies the back region of the article as shown in Figs. 1-2.

Based upon the above distinctions between Buell et al. as relied upon by the Examiner and the present invention, and the overall teachings of Buell et al., properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon Buell et al. as required under 35 U.S.C. §102 as anticipating applicants' claimed invention.

Moreover the Examiner cannot rely upon Buell et al. as required under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicants' claimed invention.

It is, therefore, submitted that any reliance upon Buell et al. would be improper inasmuch as Buell et al. does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of Buell et al. and the outstanding rejections of the claims should hence be withdrawn.

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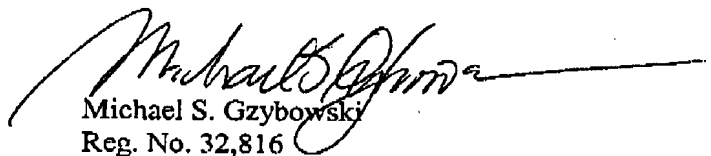
Therefore, entry of the present amendment and reconsideration and withdrawal of the outstanding rejections of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved; the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,



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